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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,887	10/08/2003	John Hall Forman III	082003.P001	6418

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EXAMINER

CHIU, RALEIGH W

ART UNIT PAPER NUMBER

3711

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/680,887	FORMAN, JOHN HALL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Raleigh Chiu	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 16-33 and 35 is/are rejected.
- 7) ☒ Claim(s) 12, 14, 15 and 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "the angle" lacks a proper antecedent basis.

***Claim Rejections - 35 USC §§ 102 and 103***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1, 7-9, 13, 16, 18, 19, 32 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 4,871,178 (Diaz).

Regarding claims 1, 7 and 9, Figures 8 and 9 of Diaz show a surface 24 and frame 22 which are inherently capable of being removably attached to a volleyball net.

Regarding claim 8, surface 24 is inherently capable of having a ball or shuttlecock pass through.

Regarding claims 13 and 32, Figure 6 shows the cross-sectional area of the upper opening to be adjustable.

Regarding claim 16, the plane containing the upper opening is inherently adjustable.

Regarding claims 18 and 35, Figure 6 further shows a plurality of members 40 which allow the surface to collapse.

Regarding claim 19, the frame can be made from plastic. See column 3, lines 62-66.

6. Claims 2, 3, 6 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diaz as applied above in view of U.S.

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Patent Application Number 2002/0107092 (Gottlieb-Myers et al., hereinafter Gottlieb-Myers).

Regarding claims 2, 3 and 6, it would have been obvious to a person of ordinary skill in the art to include a signal in communication with the lower opening of the Diaz surface in view of Gottlieb-Myers who shows in Figure 2 that it is old and well-known in the art to place a sensor 30 and audio signal at the bottom of a net 18 to indicate to a game player when a ball passes through a net. See also Gottlieb-Myers at paragraphs [0018] and [0029].

Regarding claim 4, the selection of the specific audio signal is not considered to be critical, but obvious to one of ordinary skill in the art as a matter of designer preference.

7. Claims 5, 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diaz and Gottlieb-Myers as applied above in view of U.S. Patent Number 6,582,329 (Cabrera).

Regarding claim 5, it would have been obvious to use a visual signal in view of Cabrera who teaches that both visual and audio signals are well-known signals that can be used with ball sensors. Also, see Cabrera at column 8, lines 4-65.

Regarding claims 10 and 11, it would have been obvious to one of ordinary skill in the art to color the top portion of the

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frame differently in view of Cabrera to allow the frame to be seen in the dark. Also, see Cabrera at column 7, lines 32-34.

8. Claims 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Gottlieb-Myers as applied above.

Regarding claims 27-29, paragraphs [0018] and [0029] of Gottlieb-Myers describe an electrical sensor 30 and an audio alarm 44.

9. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gottlieb-Myers as applied above.

The selection of the specific audio signal is not considered to be critical, but obvious to one of ordinary skill in the art as a matter of designer preference.

10. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gottlieb-Myers in view of Cabrera as applied above.

It would have been obvious to use a visual signal with the Gottlieb-Meyers sensor in view of Cabrera who teaches that both visual and audio signals are well-known signals that can be used with ball sensors.

11. Claims 20 and 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 5,470,056 (Dennesen).

Regarding claims 20, 24 and 26, Figure 1 of Dennesen shows a volleyball practice device where, in operation, a frame 14

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with surface 16 is attached to a court net 12 and a volume is formed wherein an upper opening is created above the net.

Further, after the ball passes through the upper opening, it is considered to pass through a lower opening where the ball is directed toward to the ground or back to the player. See column 2, lines 32-42.

Regarding claim 22, the step of adjusting an angle is considered to be inherently met when a user is in the process of attaching the device to the net in the desired position.

Regarding claim 23, switching from one frame embodiment to another (see Figures 2-3) is considered to be adjusting the cross-sectional area of the upper opening.

Regarding claim 25, the frame can be made from plastic. See column 4, lines 3-10.

12. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dennesen as applied above in view of Gottlieb-Meyers as applied above.

It would have been obvious to one of ordinary skill in the art to use a sensor in the lower portion of the net in view of Gottlieb-Meyers for audio/visual confirmation of a ball passing through the net.

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***Allowable Subject Matter***

13. Claims 12, 14, 15 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (703) 308-2247. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich, can be reached on (703) 308-1513.

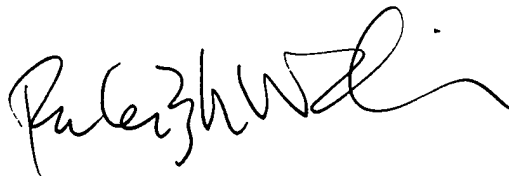
The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Raleigh W. Chiu', with a stylized flourish at the end.

Raleigh W. Chiu  
Primary Examiner  
Technology Center 3700

RWC:dei:feif  
5 August 2004